

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Debra Anne Eklund,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 0:16-cv-872-BHH
)	
Nancy A. Berryhill, Acting)	
Commissioner of Social Security)	<u>ORDER</u>
Administration,)	
)	
Defendant.)	
_____)	

On June 28, 2018, Nowell S. Lesser, counsel for Plaintiff, filed a motion for attorney's fees pursuant to 42 U.S.C. § 406(b). (ECF No. 31.) Specifically, counsel requests reimbursement for representation provided in the above-captioned case in the amount of \$5,504.50, which is based on 25% of Plaintiff's past-due benefits of \$68,018.00—or \$17,004.50—minus a credit of \$5,500.00 for fees paid under the Equal Access to Justice Act ("EAJA"), and \$6,000.00 previously paid by the Social Security Administration for work performed at the administrative level.

As required by 42 U.S.C. § 406(b), the amount requested by counsel is not greater than twenty-five percent (25%) of the past-due benefits recovered by Plaintiff. On July 10, 2018, counsel for the Acting Commissioner of Social Security ("Commissioner") filed a response to the motion (ECF No. 32), in which she states that she does not object to the motion but clarifies that fees are for court time only. The Acting Commissioner requests that the Court authorize a payment to Plaintiff's counsel in the amount of \$11,504.50 and order counsel to remit to Plaintiff the \$5,500.00 in attorney's fees previously awarded under EAJA. The Court has reviewed the motion and exhibits and finds counsel's motion

reasonable.

Accordingly, IT IS **ORDERED** that Plaintiff's counsel's motion for attorney's fees (ECF No. 31) pursuant to the Social Security Act, 42 U.S.C. § 406(b), is **GRANTED** in the amount of \$11,504.50. Plaintiff's counsel shall refund to Plaintiff the amount of fees previously awarded under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d).¹

IT IS SO ORDERED.

/s/Bruce H. Hendricks

The Honorable Bruce Howe Hendricks
United States District Judge

July 11, 2018
Charleston, South Carolina

¹ As previously mentioned, Plaintiff received \$5,500.00 in attorney's fees under EAJA, and Plaintiff's counsel must refund to Plaintiff the amount of fees already received. See *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (noting that fees may be awarded under both § 406(b) and EAJA but that the claimant's attorney must refund to the claimant the amount of the smaller fee) (internal quotations and citation omitted); *Astrue v. Ratliff*, 130 S.Ct. 2521, 2528 (2010).